

**Subpart 2414.4—Opening of Bids and Award of Contracts**

**2414.404 Rejection of bids.**

**2414.404-1 Cancellation of invitations after opening.**

(c) Invitations may be cancelled and all bids rejected before award but after opening when the Head of the Contracting Activity, as described in subpart 2402.1, determines in writing that cancellation is appropriate and consistent with FAR 14.404-1.

[50 FR 46577, Nov. 8, 1985]

**2414.407 Mistakes in bids.**

**2414.407-3 Other mistakes disclosed before award.**

(e) The determination to allow a bidder to: Correct a mistake in bid discovered before award (other than obvious clerical errors); withdraw a bid; or, neither correct nor withdraw a bid shall be submitted to the Head of the Contracting Activity for approval.

[57 FR 59788, Dec. 15, 1992. Redesignated at 61 FR 19470, May 1, 1996]

**2414.407-4 Mistakes after award.**

(d) For determinations under FAR 14.407-4(b) (1) and (2), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

[61 FR 19470, May 1, 1996]

**2414.408 Award.**

**2414.408-70 Award when only one bid is received.**

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the Contracting Officer makes a written determination that: (a) The specifications were clear and not unduly restrictive; (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted; (c) the price is reasonable; and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

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[49 FR 7702, Mar. 1, 1984; 51 FR 7948, Mar. 7, 1986, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19471, May 1, 1996]

**PART 2415—CONTRACTING BY NEGOTIATION**

**Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations**

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2415.1005 Protests against award.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7703, Mar. 1, 1984, unless otherwise noted.

**Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations**

**2415.407 Solicitation provisions.**

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.215-70, Proposal Content, in all solicitations for negotiated procurements using the best value approach selection method

expected to exceed the simplified acquisition limit. The Contracting officer shall adapt paragraph (c) of the provision (i.e., include, delete, and provide additional detail to subparagraphs) to address the particular requirements of the immediate solicitation. The provision may be used in simplified acquisitions when it is necessary to obtain technical and management information in making the award selection. When award selection will be made through the lowest-priced technically acceptable proposal method, the provision shall be used with its Alternate I. If the proposed contract requires work on, or access to, sensitive automated systems as required by the clause at 48 CFR 2452.237–76, the provision shall be used with its Alternate II.

[61 FR 19471, May 1, 1996]

**2415.413 Disclosure and use of information before award.**

**2415.413–1 Alternate I.**

It is HUD's policy to have proposals evaluated by the most competent technical and management sources available. The Department's preferred procedure for evaluation of proposals is not to disclose the proposals outside the Government for evaluation purposes. If external parties will not be used to evaluate proposals, the procedures in FAR 15.413–1 Alternate I, shall be used.

[61 FR 19471, May 1, 1996]

**2415.413–2 Alternate II.**

When it is necessary to disclose proposals outside the Government to meet the Department's evaluation needs, the procedures in FAR 15.413–2 Alternate II, shall be used.

(f)(1) The HCA is authorized to make decisions regarding the release of proposals outside the Government.

(2) The written agreement shall be obtained prior to releasing proposals to the evaluator.

(3) The HCA shall make the written determination, which shall be retained permanently in the official contract file.

[61 FR 19471, May 1, 1996]

**Subpart 2415.5—Unsolicited Proposals**

**2415.505 Content of unsolicited proposals.**

**2415.505–70 Unsolicited research proposals.**

FAR subpart 15.5 outlines the policies and procedures relating to unsolicited proposals. In addition to these requirements, the Department requires that each award made as the result of an unsolicited proposal for research contain a commitment to provide actual cost-sharing. This provision will be included in the award whether or not cost-sharing was part of the unsolicited proposal.

**2415.506 Agency procedures.**

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR subpart 15.5.

(b) Unless otherwise specified in a FEDERAL REGISTER announcement unsolicited proposals should be submitted to the following contact points:

(1) *For research*— Department of Housing and Urban Development, Assistant Secretary for Policy Development and Research, Office of Management and Program Control, 451 7th Street SW., Washington, DC 20410.

(2) *For funding under the Secretary's Discretionary Fund Program*—Department of Housing and Urban Development, Assistant Secretary for Community Planning and Development, Office of Program Policy Development, 451 Seventh Street, SW., Washington, DC 20410.

(3) *For all others*— Department of Housing and Urban Development, Director, Office of Procurement and Contracts, 451 7th Street SW., Washington, DC 20410.

[49 FR 7703, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

**Subpart 2415.6—Source Selection**

SOURCE: 50 FR 46577, Nov. 8, 1985, unless otherwise noted.

**2415.604 Responsibilities.**

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five voting members, with one member serving as the chairperson. For more complex procurements, the TEP may add advisors and/or a committee structure to focus on specific technical issues or concerns. For inexpensive or routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative. The TEP is responsible for documenting the evaluation of all proposals as appropriate to the source selection approach in use, and for making the source selection recommendation(s).

(c)(4) The selection of the source(s) for contract award shall be made by:

(i) The contracting officer for awards using the "lowest-priced technically-acceptable proposal" approach; or,

(ii) The Source Selection Official (SSO) for awards based on the "best value" approach.

[60 FR 46156, Sept. 5, 1995]

**2415.605 Evaluation factors.**

(d)(1) The solicitation shall state the basis for the source selection decision as either "lowest-priced technically-acceptable proposal" (LPTAP) or "best value" (see 2402.1, Definitions).

(2) When using the best value approach, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTAP, each evaluation factor is applied on a "pass-fail" basis; numerical scores are not assigned. "Pass-Fail" evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

[60 FR 46156, Sept. 5, 1989, as amended at 61 FR 19471, May 1, 1996]

**2415.608 Proposal evaluation.**

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the TEP Chairperson or his or her designee. The cost/price portion of

each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(3) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being either acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the best value approach, predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed. A technical evaluation report, which complies with FAR 15.608(a)(3), shall be prepared and signed by the technical evaluator(s), furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

(b) The HCA may reject all proposals received in response to a solicitation. His or her written determination shall follow FAR 15.608(b).

[50 FR 46577, Nov. 8, 1985, as amended at 57 FR 59789, Dec. 15, 1992; 60 FR 46156, Sept. 5, 1995; 61 FR 19471, May 1, 1996]

**2415.610 Written or oral discussion.**

(b) Except as provided in FAR 15.610(a), the Contracting Officer (or his or her designee) and the TEP shall conduct written or oral discussions with all responsible offerors who submit proposals within the competitive range.

**2415.611 Best and final offers.**

(d) After receipt and evaluation of best and final offers, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

[60 FR 46156, Sept. 5, 1995]

**2415.613 Alternative source selection procedures.**

(a) The Department of Housing and Urban Development uses procedures authorized by FAR 15.613 for all research and development contracts and

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other contracts where the contractor's proposed methodology of carrying out the work is a significant selection factor and the award decision will follow the best value approach.

(b) These procedures allow for limited oral or written discussions to avoid technical leveling, a request for best and final offers, and selection of source(s) for negotiation of a final contract.

[57 FR 59789, Dec. 15, 1992, as amended at 60 FR 46156, Sept. 5, 1995]

### 2415.613-70 Technical evaluation.

The TEP shall perform the required technical evaluation of proposals received in accordance with 2415.608.

[60 FR 46156, Sept. 5, 1995]

### 2415.613-71 Limited written or oral discussions.

Limited written or oral discussions shall be conducted with each offeror considered to be within the competitive range. These discussions should address technical weaknesses of the particular offer, as well as cost issues, to the fullest extent practicable while avoiding technical leveling.

[57 FR 59789, Dec. 15, 1992]

### 2415.613-72 Selection and final negotiation.

(a) *Selection.* After the close of discussions and receipt of best and final offers, the TEP shall perform a final evaluation and prepare its selection recommendation for the SSO. Based on this evaluation, the SSO shall select for final contract negotiation the offeror(s) whose proposal is most advantageous to the Government in terms of price/cost, technical and other relevant factors included in the solicitation.

(b) *Final negotiation.* This includes reaching agreement with the selected source on any remaining cost/price, technical, socioeconomic, or other issues that will condition performance of the contract and setting forth those terms and conditions in a mutually acceptable contract document. No factor or condition that could have had any effect on the selection process may be changed at this point. These negotiations are led by the contracting officer and may include any technical, audit,

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or support personnel he/she deems necessary.

[57 FR 59789, Dec. 15, 1992, as amended at 60 FR 46156, Sept. 5, 1995]

## Subpart 2415.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

### 2415.1005 Protests against award.

Protests against awards of negotiated procurements shall be processed in accordance with FAR subpart 33.1 and HUDAR subpart 2433.1

[50 FR 46578, Nov. 8, 1985. Redesignated at 61 FR 19471, May 1, 1996]

## PART 2416—TYPES OF CONTRACTS

### Subpart 2416.4—Incentive Contracts

Sec.

2416.405 Contract clauses.

2416.506 Solicitation provisions and contract clauses.

2416.506-70 Unpriced delivery/task orders.

### Subpart 2416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603-2 Application.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7706, Mar. 1, 1984, unless otherwise noted.

### Subpart 2416.4—Incentive Contracts

#### 2416.405 Contract clauses.

(e)(1) The Contracting Officer shall insert the clauses at 2452.216-70, Estimated Cost, Base Fee, and Award Fee; 2452.216-71, Payment of Base and Award Fee; 2452.216-72, Determination of Award Fee Earned; 2452.216-73, Performance Evaluation Plan; and 2452.216-74, Distribution of Award Fee, in all award fee contracts. The Contracting Officer may modify the clauses to meet individual situations and any clause or specific requirement therein may be deleted when it is not applicable to a given contract.

[53 FR 46535, Nov. 17, 1988]